

FILED  
U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
CENTRAL DIVISION

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,	)	Case No. 2:06CR006-TC-12
	)	
Plaintiff,	)	<b>ORDER DENYING</b>
	)	<b>MOTION TO DECLARE</b>
vs.	)	<b>SENTENCING GUIDELINES</b>
	)	<b>UNCONSTITUTIONAL</b>
RAMON SALAZAR,	)	Judge Tena Campbell
	)	
Defendant.	)	

This Court convened a hearing for oral argument regarding Defendant Salazar's "Motion to Declare Sentencing Guidelines Unconstitutional" (Docket No. 374) and the United States' response thereto (Docket Nos. 377, 378) on Thursday, June 21, 2007 at 3:30 p.m. The United States was represented by Jared C. Bennett, Assistant United States Attorney, and Defendant was represented by Jeremy M. Delicino. After considering the arguments and representations provided in the parties' written submissions and at oral argument, this Court DENIES Mr. Salazar's motion.

Mr. Salazar has moved this court for an order declaring the United States Sentencing Guidelines unconstitutional. Mr. Salazar argues specifically that the PROTECT Act constitutes an impermissible and unconstitutional encroachment on the powers traditionally performed by the judicial branch. The court disagrees.

As the United States points out, the constitutionality of the Guidelines has been highly litigated in the last couple of years. In United States v. Booker, 543 U.S. 220 (2005), the United

States Supreme Court remedied any constitutional infirmity that may have existed within the guidelines by making the guidelines advisory rather than mandatory. The proper standard of review for a sentence under the now-advisory guidelines is for reasonableness. Id. at 261. The Court of Appeals for the Tenth Circuit has held that “a presumption of reasonableness attaches to a sentence within the guidelines” and that the guidelines “represent eighteen years’ worth of careful consideration of the proper sentence for federal offenses.” United States v. Terrell, 445 F.3d 1261, 1264-65 (2006) (citations omitted). This presumption of reasonableness was recently held constitutional by the United States Supreme Court. Rita v. United States, \_\_\_ U.S. \_\_\_, No. 06-5754 (June 21, 2007). This court is bound by Booker, Rita, and its Tenth Circuit progeny.

The court also notes that Defendant’s counsel has filed an identical motion before three other courts in this district. All of those motions were denied. This court will therefore follow the precedent set by the United States Supreme Court, the Tenth Circuit, and the other courts in this district who have denied motions similar to this one.

IT IS HEREBY ORDERED that Mr. Salazar’s Motion to Declare Sentencing Guidelines Unconstitutional is DENIED.

DATED this 26 day of June 2007.

  
\_\_\_\_\_  
TENIA CAMPBELL, Chief Judge  
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Notice of Supplemental Authority was e-mailed to the following this 26th day of June 2007 for review:

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/s/ Jared C. Bennett